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STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

September 25, 2009

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

HAWAII

**Issuance of Right-of-Entry to the United States Army Corps of Engineers for
Survey and Investigation of the Former Popoki Bombing Range at Makuu,
Puna, Hawaii, Tax Map Key: 3rd/ 1-5-10: 03.**

APPLICANT:

United States of America, Department of the Army, Corps of Engineers, whose business and mailing address is Building 230, CEPOH-RE, Fort Shafter, Honolulu, Hawaii 96858-5440.

LEGAL REFERENCE:

Sections 171-55, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of the Former Popoki Bombing Range situate at Makuu, Keonepoko Nui, Puna, Hawaii, identified by Tax Map Key: 3rd/ 1-5-10: portion of 03, as shown on the attached map labeled **Exhibit A**.

AREA:

3,924.56 acres, more or less.

ZONING:

State Land Use District:	Agriculture
County of Hawaii CZO:	Agriculture

CURRENT USE STATUS:

Encumbered by Governor's Executive Order No. 2325 and 3999 to Department of Transportation, Highways Division for Highway purposes.

Land Office Deed No. S-28,100 to the Hawaii Electric Light Company, for perpetual non-exclusive utility and access easement.

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CHARACTER OF USE:

For conducting survey and investigations in preparing an environmental assessment for locating, mapping, and eventual disposal of unexploded ordnances on the property formerly known as the Popoki Bombing Range.

TERM OF RIGHT-OF-ENTRY:

This right-of-entry is for three years, commencing upon approval by the Board of Land and Natural Resources, and expiring upon the third anniversary, or upon completion of the survey/investigation work, whichever is the sooner.

CONSIDERATION:

Gratis.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, this right-of-entry is exempt from the preparation of an environmental assessment pursuant to: Exemption Class No. 1, because the right-of-entry is issued for the purpose of operations, repairs or maintenance of existing facilities and topographical features, which include the mitigation of existing hazards, that involve negligible or no expansion or change of use beyond that previously existing; Exemption Class No. 4, because it is issued for the purpose of engaging in minor alterations in the conditions of the land, water, or vegetation in the area; and Exemption Class No. 5, because it is issued for the purpose of basic data collection, research, and hazard evaluation activities that will not result in a serious or major disturbance to the environmental resources of the area.

DCCA VERIFICATION:

Not applicable as the Applicant is a government agency, and therefore, exempt from registering with DCCA.

APPLICANT REQUIREMENTS:

None.

REMARKS:

By letter dated March 30, 2009, the United States of America, Department of the Army, Corps of Engineers (USACE), relating to its Defense Environmental Restoration Program/ Formerly Used Defense Sites (DERP/FUDS) Program requested access over State owned lands to conduct surveys and investigations of the area. (**Exhibit B**) The surveys will involve limited surface, subsurface and geophysical investigations, limited soil sampling for ammunition constituents, and mapping of suspect sites. Purpose is to conduct environmental assessment and response for potential risks from ordnances that might remain as a result of combat training in the area during World War II. Following the evaluation, a plan will be developed and actions taken to address the risks of any located ordnances or remnants. The former combat training area comprises of approximately 3,924.56 acres located at Makuu, Keonepoko Nui, Puna, Hawaii, identified by Tax Map Key: 3rd/ 1-5-10: portion of 03. The ordnance removal portion of the work may include disposal of any identified unexploded ordnances, but shall not include detonation. All attempts will be made to remove unexploded items to a safe location off the property. The right-of-entry is being requested over a three-year period, to assure there is sufficient time to complete this project.

Staff is recommending that this permit be issued at gratis. This is a government related project, where no entity will gain monetarily from its use and is strictly for survey purposes only.

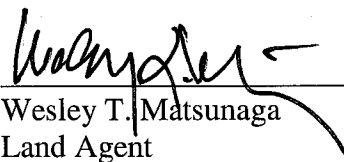
No agency or community comments were solicited as this request is only for survey purposes and does not involve a disposition of State land.

RECOMMENDATION: That the Board:

Authorize the issuance of a right-of-entry permit to The United States of America, Department of the Army, Corps of Engineers (USACE), over State lands of the Former Popoki Bombing Range situate at Makuu, Keonepoko Nui, Puna, Hawaii, identified by Tax Map Key: 3rd/ 1-5-10: portion of 03. Purpose of the right-of-entry is to allow the Army Corps of Engineers to conduct the necessary survey and investigations in preparing an environmental assessment for locating, mapping, and eventual disposal of unexploded ordnances on the property. This permit, covering the subject area under the terms and conditions cited above, which are by this reference incorporated is herein and further subject to the following:

1. The standard terms and conditions of the most current right-of-entry permit form, as may be amended from time to time;
2. The term of this right-of-entry shall be for three years, commencing upon date of this Board action, and ending upon its third year anniversary, or upon completion of the survey/ investigation, whichever is the sooner;
3. Authorize the Chairperson to issue future right-of-entry permits to the Applicant for conducting survey and investigations of the Popoki Bombing Range, to determine existence of unexploded ordnances;
4. That the USACE understands and agrees that portions of such lands are raw and unimproved, that the State has made no effort to determine or remedy possible hazards located thereon, and that the USACE enters said lands at its own risk;
5. That the USACE is aware that the subject area may contain numerous uncharted lava tubes and caves, which might be susceptible to unexpected collapse and/or cave-ins without prior warning;
6. Review and approval by the Department of the Attorney General; and
7. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Wesley T. Matsunaga
Land Agent

APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson





EXHIBIT A



DEPARTMENT OF THE ARMY
U.S. ARMY ENGINEER DISTRICT, HONOLULU
FORT SHAFTER, HAWAII 96858-5440

REPLY TO
ATTENTION OF:

March 30, 2009

Real Estate Branch.

Mr. Wesley Matsunaga
State of Hawaii
Department of Land and Natural Resources
Land Division
Hawaii District Land Office
75 Aupuni Street
Hilo, HI 96720

Dear Mr. Matsunaga:

The U.S. Army Corps of Engineers under the Defense Environmental Restoration Program, Formerly Used Defense Sites (DERP-FUDS) request access to the State of Hawaii property identified as Tax Map Key (TMK): 3rd/ 1-5-10:3 which is located at the Former Popoki Bombing Range, County of Hawaii, State of Hawaii. The purpose of the Right-of-Entry is to conduct environmental assessment and response.

Please expedite processing of this Right-of-Entry for the area known as the Former Popoki Bombing Range. Request a term of three (3) years and similar conditions identified in the enclosed Right-of-Entry No. DACA84-9-08-38 for the Former Waikoloa Maneuver Area.

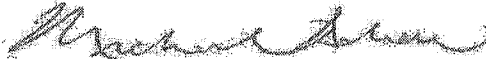
The ordnance removal work shall include disposal of any identified unexploded ordnance (all attempts shall be made to move unexploded item to a safe location off the property; if unable to do so, the unexploded ordnance will be disposed of in place, and engineering controls shall be employed in order to prevent/limit any collateral damage).

Please keep this office advised of any issues which may significantly delay execution of the Right-of-Entry. Request an advance copy of the partially-executed Right-of-Entry be sent via e-mail to Ann Loo at Ann.M.Loo@usace.army.mil to expedite further processing. A fully executed Right-of-Entry will be mailed to your office upon execution by the U.S. Army Corps of Engineers.

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Should you have any questions, please call Ms. Ann Loo at (808) 438-0871 or via e-mail at Ann.M.Loo@usace.army.mil. Thank you..

Sincerely,



Matthew W. Luzzatto, P.E.
Major, U.S. Army
Chief, Real Estate Branch

Enclosure

EXHIBIT B